

**In the United States Court of Federal Claims**

**OFFICE OF SPECIAL MASTERS**

Filed: May 8, 2023

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BILLIE J. LAVOIE,

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UNPUBLISHED

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Petitioner,

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No. 22-1516V

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v.

\*

Special Master Dorsey

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SECRETARY OF HEALTH

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Petitioner's Motion for a Decision

AND HUMAN SERVICES,

\*

Dismissing Her Petition; Influenza ("Flu")

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Vaccine; Neuropathic Symptoms;

Respondent.

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Gastrointestinal Symptoms.

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\* \* \* \* \*

Daniel Henry Pfeifer, Pfeifer, Morgan & Stesiak, South Bend, IN, for Petitioner.

Parisa Tabassian, U.S. Department of Justice, Washington, DC, for Respondent.

**DECISION**<sup>1</sup>

On October 14, 2022, Billie J. Lavoie ("Petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program ("Vaccine Program")<sup>2</sup> alleging that as a result of an influenza ("flu") vaccine administered on October 15, 2019, she suffered "illness and adverse effects," including neuropathic and gastrointestinal symptoms. Petition at 1-3 (ECF No. 1). The information in the record, however, does not show entitlement to an award under the Program.

On May 8, 2023, Petitioner file a response to Respondent's Rule 4(c) Report and moved

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<sup>1</sup> Because this Decision contains a reasoned explanation for the action in this case, the undersigned is required to post it on the United States Court of Federal Claims' website and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc> in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

<sup>2</sup> The Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-10 *et seq.* (hereinafter "Vaccine Act" or "the Act"). Hereafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

for a decision dismissing her case. Petitioner's Response to Respondent's Rule 4(c) Report ("Pet. Response"), filed May 8, 2023 (ECF No. 19); Pet. Motion to Dismiss ("Pet. Mot."), filed May 8, 2023 (ECF No. 21). Petitioner explained she sought the consultation of an expert physician; however, Petitioner could not "secure qualified testimony that adequately establishes causation between her injuries and the [flu vaccine that she received]." Pet. Response at 1; see also Pet. Mot. at ¶¶ 1-3. Petitioner concluded "that she cannot meet her burden of establishing her entitlement to compensation under the Act and that her Petition should be dismissed." Pet. Response at 1. Respondent confirmed via email that Respondent agreed to the dismissal.

To receive compensation under the Program, Petitioner must prove either (1) that she suffered a "Table Injury"—i.e., an injury falling within the Vaccine Injury Table—corresponding to the vaccination, or (2) that she suffered an injury that was actually caused by the vaccination. See §§ 11(c)(1), 13(a)(1)(A). The records submitted by Petitioner show that she does not meet the statutory requirement to establish entitlement to compensation. The Federal Circuit has explained that the eligibility requirements in Section 11(c) are not mere pleading requirements or matters of proof at trial, but instead are "threshold criteri[a] for seeking entry into the compensation program." Black v. Sec'y of Health & Hum. Servs., 93 F.3d 781, 785-87 (Fed. Cir. 1996).

Accordingly, in light of Petitioner's motion and a review of the record, the undersigned finds that Petitioner is not entitled to compensation. **Thus, this case is dismissed. The Clerk shall enter judgment accordingly.**

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**

Nora Beth Dorsey

Special Master